



Agenda Item

Date: September 24, 2013
To: Fresno County Board of Supervisors
From: Supervisor Andreas Borgeas

Subject: *The Fresno County Campaign Reform Act*

RECOMMENDED ACTION:

Recommend the Board of Supervisors:

- (1) Adopt a County initiated ballot measure for the 2014 Fresno County Primary Election, pursuant to California Government Code § 25000(b), that would create an ordinance providing a three-term limit for members to serve on the Board of Supervisors;
- (2) Adopt an ordinance, applicable to all County elective offices, that would establish campaign contribution limitations consistent with the State Assembly/Senate contribution limits provided under California Government Code §85301(a) et seq.; and
- (3) Request the County Clerk to implement a policy whereby all California Form 496/497 submissions, the 24-Hour Late Contribution reporting forms pursuant to California Government Code §82306, would be posted on the County Clerk website no later than close of business on the third working day from the date the form is received by the County Clerk.

Collectively these actions are referred to as *The Fresno County Campaign Reform Act*. Approval of the recommended actions will (1) initiate a ballot measure that would propose Supervisorial term limits; (2) create an ordinance instituting campaign contribution limits for all County elective offices; and (3) create a timeline for the online posting of Form 496/497 disclosures.

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BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____ BORGEAS _____ CASE _____ LARSON _____ PEREA _____ POOCHIGIAN _____

ALTERNATIVE ACTIONS:

- 1) Accept or reject *The Fresno County Campaign Reform Act* in whole or in part.
- 2) Approve the Term Limit item (#1), but reject County funding.
- 3) Render the Timeline for Online Posting item (#3) a one-year pilot program.

FISCAL IMPACT:

Unknown

IMPACTS ON JOB CREATION:

Unknown

DISCUSSION:

(1) Term Limits

California law provides that a County may initiate a ballot measure to limit the number of terms a member may serve on the board of supervisors. California Government Code Section 25000 (b) provides in relevant part as follows:

“[T]he board of supervisors of any general law or Charter County may adopt..., by initiative, a proposal to limit or repeal a limit on the number of terms a member of the board of supervisors may serve on the board of supervisors. Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply prospectively only and shall not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.”*

The recommended action, if approved by a majority of the votes cast in the 2014 Primary Election, would allow members of the Fresno County Board of Supervisors to serve a maximum of 12 years, or three cumulative four-year terms. The action is not retroactive and would apply only to prospective terms for members of the board. In other words, for purposes of calculating the activation period of the proposed three-term limit, the calculation period would commence upon the new term for each of the respective supervisorial districts.

Currently, the members on the Fresno County Board of Supervisors may serve for an unlimited amount of time or until they are voted out of office. Term limits will generate more opportunities for persons wishing to serve in public office, energize the political culture of Fresno County and give voters a wider choice of candidates from which to choose. Fresno County would not be the first county in California to implement term limits. A cursory review of other California counties that have supervisorial term limits include the counties of San Joaquin, Orange, San Francisco, San Mateo, Santa Clara and Los Angeles.

* Worth noting is that County Counsel had earlier rendered an opinion that while the Board of Supervisors has the authority under Government Code 25000(b) to create term limits through a ballot measure, the Board of Supervisors lacks the constitutional or legislative authority to create term limits for other county elective officers.

Examples:

If a June 2014 ballot initiative instituting a three-term limit were successful, the three-term limit would commence upon the new term for each of the respective supervisorial districts. California Government Code Section 25000 (b) is not retroactive and shall only apply to prospective terms for members of the board. By way of example, ...

(i) If Candidate X is elected and assumes office in January of 2017, he/she, if reelected, would be able to serve until January of 2029, which is the equivalent of three 4-year terms (12 years) on the Fresno County Board of Supervisors.

(ii) If a Supervisor serves one term (i.e. January 2017 – January 2021), after the presumed passage of a June 2014 ballot measure that instituted a three-term limit, then chooses not to run for reelection or fails to win reelection, he/she could serve, if elected, two more terms.

(iii) If Supervisor X was elected in 2010, before the presumed passage of a June 2014 ballot measure that would institute term limits, the Supervisor, if reelected, would be able to serve three more terms on the Fresno County Board of Supervisors.

(iv) If Supervisor X was elected in November 2012 and assumed office in January 2013, before the presumed passage of a June 2014 ballot measure that would institute term limits, the three-term limit would commence on the Supervisor's next term, if reelected, in January 2017.

(v) If a June 2014 ballot initiative instituting a three-term limit were successful, and Candidate X is elected in the November 2014 election to assume office in January 2015, he/she, if reelected, would be limited to serving three terms, or until January 2027.

(2) Contribution Limits

Fresno County currently has no campaign contribution limits. This allows any candidate for elective office in Fresno County to lawfully solicit and accept from a single source an unlimited amount of campaign contributions. In contrast to rules commonly regulating local, state and national elections, Fresno County stands apart in having no contribution limitations. In effort to improve the public's confidence in the Fresno County electoral process, it is respectfully recommended that Fresno County adopt an ordinance, applicable to all County elective offices, which would make the Fresno County Ordinance Code consistent with the campaign contribution limitations for state *Assembly* and *Senate* offices, as provided under the California Government Code.

Section 85301(a) "Limits on Contributions from Persons" provides in relevant part:

A person, other than a small contributor committee or political party committee, may not make to any candidate for elective state office ... any contribution totaling more

than [\$4,100] per election. *See Exhibit A*, (amount designated for the period January 2013-December 2014).

This means that no candidate for the California Assembly or Senate may accept campaign contributions from one source in excess of \$4,100 per election. In Fresno County for example, were contributions to be limited as described, a candidate for County office could potentially receive from one source \$4,100 for the primary election, and \$4,100 for the general election, or \$8,200 in total. In contrast, under the current policy, a candidate for county elective office could theoretically receive from a single source any amount of money.

An electoral process without financial limitations increases the potential and perception of financial interests unduly influencing the political process. While a contribution limit, in and of itself, will not eliminate political influences, it may ameliorate the extent to which such interests can lawfully engage in the political process.

Other important elements of California Government Code §85301 *et seq.* worth noting are the following:

- (i) Candidate's contributions of his or her personal funds to his or her own campaign are excluded;
- (ii) Contributions from affiliated entities are aggregated for purposes of the limits; and
- (iii) The primary, general, special, and special run-off elections are considered separate elections.

Finally, this proposed Ordinance is envisioned to have an effective date of January 1, 2014, yet the Board has the option of selecting another effective date. The calculation of funds, for contribution limitation purposes, would commence and be applicable for contributions following the effective date. Any monies received prior to the implementation of the proposed Ordinance would, for due process reasons, be inapplicable to contribution calculations.

(3) Timeline for Online Posting of Forms 496/497

The Political Reform Act, as amended in 2012, changed the financial disclosure rules for late contributions. According to California Government Code § 82036(a), a Late Contribution is a contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate ... within... " [a specified time period before an election]. Prior to the 2012 amendments, that period of time was 16 days immediately preceding the election in which the recipient candidate or matter was to be voted on, but with the 2012 amendments that time has since changed to 90 days.

The California Form 496, which covers independent expenditures, and 497, which covers committees, are the Fair Political Practices Commission forms that disclose to the public the details of a late contribution and are due to the Fresno County Clerk within 24-hours of receiving or making the contribution. While Forms 496/497 are public documents, to be made available to the public, there are currently no policies specifying when the forms must be

available online for public access. The recommended action would request the County Clerk to implement a policy whereby all California Forms 496/497 submissions would be posted on the County Clerk website no later than close of business on the third working day from the date the form is received by the County Clerk.

For example, if Candidate X files a Form 497 on Monday at 3:00 p.m. at the County Clerk's office, the Clerk would be asked to make that form publicly available on the County website within three working days, or close of business (5:00 p.m.) on Thursday. In effort to accommodate the heavy demands on the Clerk's office during the height of an election, this policy would be suspended seven (7) working days preceding and following an election day.

This proposed policy is designed to improve the transparency of late campaign contributions and make it easier for members of the public to access information.

See Exhibits:

- A. Cal. Gov. Code § 25000(b)
- B. Political Reform Act (2013)(§ 85301, § 82036)
- C. FPPC State Contributions Chart
- D. CA Form 496 and 497 materials